UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

THE MCCLATCHY COMPANY, et al., Main Case No.

Debtors. 20-10418-mew

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 4, 2020

3:00 PM

B E F O R E:

HON. MICHAEL E. WILES

U.S. BANKRUPTCY JUDGE

Motion authorizing abandonment of equity interests in Quad County Publishing

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P R O C E E D I N G S

THE COURT: Good afternoon, everybody.

IN UNISON: Good afternoon, Your Honor.

THE COURT: All right. Forgive me if this gets a little difficult. I am without electricity here in Westchester County, where the storm came roaring through. I managed to print some of the documents before the battery power in my computer went out, but I only had a chance to read them hastily, and I'm on a combination of battery-powered and backup-powered devices here, so I don't even know how long they'll last.

MR. DURRER: Well, this is Van Durrer, Your Honor. We will endeavor to be efficient. That sounds like quite a dilemma. I know we're not the only thing you're working on these days.

THE COURT: Okay.

MR. DURRER: So without further ado, Your Honor, given your circumstances, I'll just launch right into it. Van Durrer, Skadden Arps, on behalf the McClatchy debtors. There's a three-item agenda that is, just for the record, docket -- I just lost it -- docket 732. The three items, Your Honor, just briefly, are the committee's standing motion, and then a modest abandonment motion is number 2, and then the sale motion is 3.

With your permission, I'll skip over 1, because it's tied up in the sale relief. So going right to agenda item

number 2, there were no objections filed to this motion. It's a motion for Quad County -- for the debtors to abandon its interest in Quad County Publishing, Inc. This is an Illinois entity. It has no business. It has no assets. But it does continue to generate franchise fees. So we're seeking to abandon that so that we can cut that off as an administrative expense.

As I mentioned, there was no objection to this docket number 589. Does Your Honor have any questions about that?

THE COURT: I have a question. The motion says that you want to abandon the equity and to dissolve the company under applicable law, but isn't this a debtor in these cases?

MR. DURRER: It is a debtor, Your Honor. And we did get permission -- well, consent from the lender groups, including the DIP lender, to pursue this relief.

THE COURT: So you can't dissolve it under state law unless you dismiss the bankruptcy case. Is that what you want to do?

MR. DURRER: We thought abandonment got us sufficiently there, Your Honor, to abandon the equity interest. But --

THE COURT: Well, that abandons -- that abandons the equity interest from the point of view of the other debtors that own it, but this company itself is a debtor in the case -- in the consolidated cases. So --

MR. DURRER: Yes, Your Honor, that is --

THE COURT: -- isn't -- even if its ownership is abandoned, it's still there.

MR. DURRER: Yeah, understood, Your Honor. I think our view was that we would wrap that up in connection with the plan, that element of it. But if Your Honor is prepared to dismiss that case today, obviously, we'd be happy to have that relief as well.

THE COURT: Well, I don't mind the other debtors abandoning their equity in it. But just let me know what it is you want to do. It's a party to a case. If you want to dismiss it, let me know. If you want to wrap it up in the plan, let me know.

MR. DURRER: Yeah, I think it's efficient enough, Your Honor, just to wrap it up in the plan.

THE COURT: Okay, all right. That was my only question.

MR. DURRER: Okay, thank you, Your Honor.

And then that takes us to item number 3, Your Honor, which is the sale. We've given you a lot of the details yesterday. There were a handful of objections. Basically the purchase price, just for the record, is the first lien debt, which is approximately 263 million dollars, plus an additional almost 50 million dollars of cash consideration.

As we discussed yesterday, one of the committee's

chief concerns with respect to the sale was that there was a variety of unencumbered assets that were being purchased in connection with the credit bid. Ultimately we reached a peaceful settlement. But just to walk to through those details briefly without burdening your battery power too much, the unencumbered assets fell into a few categories.

There was really no dispute that there was a handful of pieces of real estate, about a half a dozen that were unencumbered. The value of those is in the range of twelve or thirteen million dollars.

There were causes of action. And those causes of action, under the proposed sale, are left behind with the estate, and most notably, the causes of action involving current and former officers and directors.

There were some accounts, namely like landlord security deposits, that the cash itself is not encumbered but the right to receive the cash back at the successful proper termination of the lease would still be a general and tangible that would be subject to the lenders' lien.

There were some copyrights for very old articles that, in the debtors' view, had no material value. And then lastly, there's the tax refund, which depends upon the company's not-as-yet-filed, of course, 2020 tax return.

The lenders' view is that the tax attributes that form the basis for that refund are general intangibles. There's

case law to that effect. I think the committee's theory was that because the CARES Act which allows those tax attributes to be carried back to prior years for relief on past paid taxes were generated post-petition -- the CARES Act was passed after the case was filed -- that 552 would cut off the continuation of the lenders' rights in those tax attributes.

I think that the lenders' view is that any proceeds of that tax refund would be proceeds of preexisting tax attributes.

But under the settlement, just to get to the punch-line, seventy-seven-and-a-half percent of whatever is received would go to general unsecured creditors, and a small portion would stay with the buyer.

So on balance, Your Honor, that's why we believe that paying fifty million dollars for those things is more than sufficient, particularly when we did have up to four bidders going into the final round of bidding, ultimately only two submitted qualified bids. We submitted a declaration by Jonathan Knee and Sean Harding, the CRO, with respect to those details, and those are -- we would ask Your Honor to consider them part of the record.

I'm happy, then, to -- unless Your Honor has questions, I'm happy to go into the handful of objections. There are actually only two objections that are truly live. I think one is also not live. So I think we're just down to one

objection.

THE COURT: Okay. As to the -- the declarations, so we have an evidentiary basis, which ones are you offering into evidence?

MR. DURRER: The declaration of Jonathan Knee of Evercore. Evercore ran the sale process for the debtors, Your Honor. And then the declaration of Sean Harding, our CRO.

THE COURT: And those are on the docket where? Just so we're clear what we're putting into evidence.

MR. DURRER: Of course, yes. I just want to find the docket numbers for you. The declaration of Jonathan Knee is docket number 694, and the declaration of Sean Harding is docket number 695.

THE COURT: Okay. Are there any objections to the admission of those declarations into evidence?

Okay, they're admitted.

(Declaration of Mr. Knee was hereby received into evidence as Debtors' Exhibit, as of this date.)

(Declaration of Mr. Harding was hereby received into evidence as Debtors' Exhibit, as of this date.)

MR. DURRER: Thank you, Your Honor.

With respect to the objections, the two -- all of the objections except for two have been resolved with language in the sale order. Most of those -- most of that language, Your Honor, is in the nature of reservation of rights and/or

resolving cure disputes.

The two that remain are docket number 557, which is Microsoft, and then docket number 710, which was filed on behalf of a handful of counties in Texas asserting tax claims.

With respect to the Microsoft objection, Your Honor, the objection merely highlighted that there were some post-petition amounts outstanding. The relationship we have with Microsoft is bilateral. We get services from Microsoft, but they also have access to our digital platform and our content. So there's back-and-forth all the time.

We have since verified that the amounts that Microsoft had identified as outstanding have been paid, and we've communicated that information to counsel. I'm not sure if counsel is actually appearing today, because we haven't heard back definitively, but we did send them Fed reference numbers.

THE COURT: Okay. Is Microsoft's counsel on the phone?

Okay. Well, I don't have confirmation that Microsoft agrees with that, so how do you want to handle that?

MR. DURRER: Well, the form of order overrules objections to the extent that they're not prosecuted at the hearing. And as I said, we have paid those amounts. We still have to cure if we're going to assume that contract. I think there still are pre-petition amounts. And obviously we don't yet have your permission to clear those.

So I don't -- I don't think there's anything you need to do beyond the sale order that you already have in front of you.

THE COURT: When did you give Microsoft the information about the payments?

MR. DURRER: I believe it was yesterday or late last week, Your Honor.

THE COURT: Okay. And they know that we're going forward here?

MR. DURRER: Yes. Candidly, Your Honor, they've been not as responsive as we would have liked -- their counsel. But we interpreted that, perhaps, as that they were satisfied.

THE COURT: Okay. Or that they're not paying attention. Either way, they have a responsibility to be here if they want to pursue an objection.

MR. DURRER: Yes, Your Honor.

THE COURT: Okay.

MR. DURRER: We agree.

THE COURT: All right. What's the other one?

MR. DURRER: The other one -- the Texas Taxing Authorities, this is basically an objection asserted on the basis of Texas tax law that gives a priority claim or -- I'm sorry -- a secured claim for real estate taxes.

The amounts have moved around. We're talking about between 30- and 50,000 dollars across a handful of properties.

We received language from the Texas Taxing Authorities that spoke to free and clear -- the transaction being free and clear of their liens but the liens attaching to the proceeds to the same priority and extent that they existed prior to the transaction, which we were completely fine with.

The additional language that separated us was they also wanted a segregate account. And that's something, Your Honor, we typically resist, because in a case of this size and complexity, if everybody wanted their pet escrow account, it would really create an administrative burden, particularly when claims haven't been definitively allowed.

And in this instance, as I've said, as we've been in discussions, the amounts have moved around. So if this happens a hundred times, you would have potentially more escrows than you had liens. And so we're just trying to treat everybody basically the same way.

We are accounting for the money, to be clear. We're also not asking for permission to use it. It's going to just sit where it's sitting until we have a plan of reorganization confirmed.

Oh, obviously the Texas Taxing Authority should speak for themselves, so Your Honor may want to hear from them.

THE COURT: Okay, are they on the line?

MS. WELLER: Your Honor, this is Elizabeth Weller on behalf of the Texas Tax Authorities. A few things.

When Mr. Durrer talks about the amounts moving around, the primary amount that moved is because although this states that it's a sale of substantially all assets of the debtor, we became aware that one parcel of real property was not part of this sale, but part of another sale. So we'll probably have the same issue when that comes up. But so we took those amounts out.

According to the terms of the asset purchase agreement, the purchaser is purchasing the property only subject to the tax liens and assuming the liability for its pro rata portion, which with a closing on or about September 1, is twenty-five percent of the taxes. The debtor is retaining the responsibility to pay the remainder.

Pursuant to Section 363(c)(4), absent consent from the creditors, it says the debtors "shall segregate an account for any cash collateral" in their possession.

These amounts are not moving around substantially. It's primarily -- we have -- and the information dealing with these accounts has been solely in the purview of the debtors. I didn't have access to the property tax returns until recently, which led us to remove a few smaller accounts that were not going to be assessed this year. The debtor knew those accounts were not on the roll for this year.

But also this is not strictly real property. It looks like with that one real property in Arlington, Texas being part

of a separate sale, most of this is for business personal property taxes.

And we're not comfortable with our cash collateral being commingled in the general operating accounts. We've had numer -- we've had cases where that happens. And although everybody expects there to be enough to go around and get to a plan, when we get to that stage, the money's not there, it converts to a 7, and we have no way to track our cash collateral. That's why we asked for these segregated accounts. It does not have to be a "escrow" account, just a way to track it.

THE COURT: All right. Mr. Durrer, what about that Section 363(c) language?

MR. DURRER: Yeah, the language, I think, Your Honor, doesn't apply, because again, Section 363(c) is all about using cash collateral. We're not asking -- we're not asking for permission under 363(c) to spend Ms. Weller's client's money on stuff where we'd have to provide her adequate protection. We're stuck in 363(f), which says that her liens attach to the proceeds of the sale. So I don't think it applies, Your Honor.

THE COURT: 363(c)(2) talks about using cash collateral, but the provision she cited is 363(c)(4), which says, except as provided in paragraph (2), the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

MR. DURRER: Agreed, Your Honor. My meaning was that within 363(c), that's the section that deals with the permission that the debtor can have to use cash collateral. We're not seeking to use this cash collateral. We're seeking to sell other assets to which Ms. Weller's client's liens attach. And (f) is pretty clear that those liens would attach to the proceeds.

We're not -- for example, we're not asking for permission to spend her cash on professional fees, on the electric bill, on rent. It's just going to sit there pending confirmation of a plan.

MS. WELLER: Which is essentially --

THE COURT: Actually -- yeah, but actually, Mr. Durrer, the 363(c)(4) doesn't say that you segregate cash collateral that you're going to use. It says generally that you can't use cash collateral unless I permit it. And then it says that except as allowed in paragraph (2) -- which means except to the extent I let you use it -- you shall segregate an account for any cash collateral -- any cash collateral.

So I think --

MR. DURRER: Well --

THE COURT: How hard is it --

MR. DURRER: -- I'm not going to --

THE COURT: -- how hard is it to set up an account for this?

MR. DURRER: Look, it's an administrative burden. This one -- I can't argue, that it would be hard to do this once. I think my concern is that we might be doing it many times, if -- depending on Your Honor's ruling.

But we're obviously going to account for it. There's no burden there, and we would do that in the ordinary course anyway.

Right, because I think we never even get to (c). That's my only point, Your Honor, because we're not asking for permission to use it.

THE COURT: All right. Does anybody else wish to be heard on this?

Listen, why don't you just open an account and put that -- put the amount of money in it, and they have a lien on that account, subject to resolution of their claim. Okay?

MR. DURRER: Okay, Your Honor.

THE COURT: Thanks.

MS. WELLER: Thank you, Your Honor.

THE COURT: And the other objections, Cigna, Oracle, Seagis, OWS, Ad2Pro, Chubb -- I saw the resolution of Chubb. Aetna was withdrawn. What's the status of all of those, they're all resolved?

MR. DURRER: Yes. The Seagis objection, docket number 540, was resolved and withdrawn at docket number 726. Microsoft we already talked about. Cigna you just mentioned.

There's, in the revised sale order at paragraph 47, there's a reservation of rights.

For Oracle and at least one other objection, we filed a revised cure notice. That cure notice for Oracle was docket number 714. That resolved the Oracle objection. Dallas Morning News --

THE COURT: They also objected to assumption and assignment. I take it, they're withdrawing that part of their objection?

MR. DURRER: Yes, Your Honor. And then there are -- there are two of these, Your Honor, Travelers and the landlord of the Sacramento space that the debtors have. Those are resolved in language that you don't have yet, but they are both in the nature of reservation of rights. For example, Travelers wanted to ensure that if the buyer was taking any part of the Travelers insurance program, they were taking the whole; there was no cherry-picking going on. And there's no issue there.

And then we do intend to enter into an amended lease with respect to the Sacramento location, and that reservation of rights language merely says that the assumption won't occur, except pursuant to that amended lease. And that language has been negotiated with the credit-bidding party as well.

THE COURT: Okay. Very good.

Are there any other objections or objectors who wish to be heard?

MR. HANSEN: No, Your Honor. It's Kris Hansen with Stroock & Stroock & Lavan, on behalf of the official committee. The committee supports the sale, Your Honor. Obviously we don't have an objection on file.

We were prepared to file one, as Mr. Durrer noted, but we worked with the parties to arrive at a global consensus. And so part of that consensus is that the committee supports the sale. But I wanted to make sure that we registered that support.

THE COURT: Very good. Okay.

MR. DURRER: Yeah, the settlement stipulation, Your Honor, is attached to the form of sale order that we sent you. It has the terms. But basically, it's not much more than what we talked about yesterday. It's a splitting of the tax refund heavily in the unsecured creditors' favor; the causes of action with respect to the officers and directors would also go to the unsecured creditors, to the extent that we don't resolve them sooner.

The one element of that that ties back to docket -- or I'm sorry -- agenda item number 1, is that we propose to adjourn the standing motion to August 26th. Ideally, we'll ultimately adjourn it to a confirmation hearing, but for now, I think it's sufficient to adjourn it to the August 26th omnibus hearing, when we hopefully will get a plan on file in advance of that date and ask Your Honor for relief with respect to

scheduling and confirmation on that.

THE COURT: Okay. Let me ask you just to clarify for me -- because I have some -- I have the asset purchase agreement; I have the framework agreement. It refers to other agreements that I don't think I have or maybe they're elsewhere in the docket, such as an assignment agreement. And I just want to make sure I understand the mechanics of how the first lien notes' obligations are being bid here and what's being bid.

I take it that there was an assignment of the right to credit bid to Chatham in some document that I don't think is on file. Am I right about that?

MR. DURRER: That's right, Your Honor. I think it was, in part, the framework agreement, but there was also an instruction that was given, by the parties, to the indenture trustee for the first lien notes, confirming that --

THE COURT: Can you --

MR. DURRER: -- and we have -- sorry, Your Honor.

THE COURT: And the amount that was credit bid, is that everything that was owed, or just the principal? Because I also see references to paying accrued interest on the first lien notes.

MR. DURRER: Yeah, I believe it was the entirety of the obligation, but the cash -- part of the cash proceeds in the amount of approximately fourteen million dollars, are being

used to retire the first lien interest, so there's a bit of a round-trip, or if you want to call it left-pocket-right-pocket.

But if we had had another bid, Your Honor, that flirted with that fourteen million dollars, we would have perhaps had an issue for Your Honor to resolve, but the backup bid, which is also in the materials that were filed, Your Honor, was in our view, approximately 100 million dollars less. So we're not anywhere near needing to address those issues.

THE COURT: Again, mechanically, what is it that extinguishes the debtors' obligations with respect to the first lien notes? Are they being waived under the sale order? Are they being assumed --

MR. DURRER: The ---

THE COURT: -- by the -- go ahead.

MR. DURRER: The interest -- yeah, the interest is being paid, and then the principal amount is being replaced with a new obligation that the first lien lenders are signing up for. So yeah, in the debtors' view, the first lien debt is being satisfied in full.

THE COURT: Okay. And but does the sale order -- I mean, if it's being bid, then it's -- then it's not outstanding anymore, right? At least as to the amount of credit bid. Does the sale order say that, somewhere?

MR. DURRER: I believe it does, Your Honor. If it does not, we'll be happy to add that. But yes, that is -- that

is the intent. The debtors have no further obligation on the first lien.

THE COURT: All right. And I saw in the revisions, a provision for the payment of the indenture trustee fees and expenses and what about make-whole rights; are they being explicitly waived?

MR. DURRER: Paul Weiss or Kramer Levin may want to address that. They're certainly not being paid, if there are any. I don't know if there are any applicable on this transaction.

MR. ROSENBERG: Your Honor, Andrew Rosenberg; Paul, Weiss, Rifkind, Wharton & Garrison, for Chatham. Hopefully my phone will hold out. I too am in Westchester and experiencing all sorts of problems.

There was a -- I believe there was a make-whole provision -- there is a make-whole provision in the first lien, and I don't -- the language, I believe, was closer to the so-called American Airlines language. But in any event, all the obligations under the first lien are ultimately being extinguished through principal, make-whole, and interest, part of the interest being extinguished through the round-tripping of some of the cash.

But whatever obligations there are: make-whole, principal, first lien, all gone -- or principal, interest, make-whole, are all being extinguished as part of the credit

bid.

THE COURT: Okay. So if you could either add that or point me to where the sale order already says that, I would appreciate it, okay?

MR. DURRER: We will do that, Your Honor. We owe you the additional reservation of rights language for Travelers and the landlord in California, anyway. So we will either point it out or add it when we submit that.

THE COURT: The documents ask me to approve the framework agreement, as well. Why am I doing that? It seems to be just among the buyers.

MR. ROSENBERG: Your Honor, Andrew Rosenberg again. We figured you would ask that. Right now, the way it's structured, our asset purchase agreement and credit bid, some of the -- the way the bid is ultimately structured, some of the bidders are taking equity, some of the other bidders are taking new debt.

This framework agreement sets out the framework for how that's being done. And some of the -- some of the parties who are taking back the debt required as a condition precedent that the sale order approve the framework agreement, since it was an integral part of the transaction, because it determined who was getting what under the bid. That was the reason for it, that certain of the parties asked for it, because of the nature of the bid, that it was ultimately divvying up the

assets between equity holders and people receiving new debt.

THE COURT: I'm not sure my approval means anything. I have no -- in my opinion --

MR. HANSEN: Your Honor, it's Kris Hansen on behalf of the -- with Stroock, on behalf of the committee. If I might interject?

So it's -- the complication that we have is that we have a sale today, and obviously we have some -- we have consideration coming into the estate, and we have certain assets of the estate that were subject to and are subject to the asset purchase agreement that are being either left behind or transferred in part, from a benefit perspective, to an unsecured creditor trust, for the benefit of creditors, which we'll all put in a plan and we'll have approved of you -- have in front of you and hopefully have approved in the future.

The problem is, is that there are certain assets that get locked in place today as part of the sale process, and we need those assets carved out.

We also are not confirming the plan today, but we're trying to set forth a framework that everybody has agreed to live by. And unfortunately --

MR. ROSENBERG: Kris? Kris, I think you may be confusing your agreements. This is the -- not the settlement -- this is the framework agreement amongst the purchaser participants.

MR. HANSEN: I'm sorry, Andy. I thought the judge was asking about the settlement agreement framework.

THE COURT: No, I'm asking about the agreement that's called "framework agreement", that's among Brigade and the trustee and Chatham.

MR. HANSEN: All right, my apologies, Your Honor.

MR. ROSENBERG: This is what happens when, of all things, we have multiple framework agreements.

So Your Honor, that is the explanation. I would say it is somewhat of a -- and I think Mr. Mannal is on for Brigade, who may want to speak to this also. But it is somewhat of a -- has a bit of a comfort order in it -- nature to it, but the reason for it was that it is an integrated transaction with a lot of moving pieces, and ultimately creditors of the estate getting different slices of the assets through debtor equity.

And the people who are taking back debt instruments in particular wanted the additional comfort, for whatever value it may have, of the Court approving how we're -- how the ultimate structure of the transaction is being done.

MR. MANNAL: Your Honor, this is Doug Mannal from Kramer Levin on behalf of Brigade. Hopefully, you can hear me. Hopefully my phone holds out.

As Mr. Van Durrer said at the outset, the purchase price was a combination of credit bid, debt, and cash. And

there was a framework agreement that essentially, between the parties, divided and allocated certain new debt to certain of the first lien holders and certain subordinated debt to other first lien holders and equity to others.

And we thought it important to have that framework agreement filed with the Court and approved by the Court. And to the extent that some party challenges that the Court approval doesn't mean anything, we would feel much better if we had this Court having reviewed that framework agreement and approved it.

THE COURT: Well, if it's part of the APA, I suppose I approve it. But it doesn't seem to describe adjustment of the debtors' obligations. It seems to describe the capital structure of the new entity, and it seems to talk about the terms under which the new entity has acquired the right to credit bid, none of which, ordinarily, would be any of my business, I don't think.

But I guess that's more a curiosity. I don't know that there's any harm to my saying I approve it. I just don't know what, if any, consequence it has for me to say that.

MR. DURRER: Well, Your Honor, from -- this is Van Durrer. From the debtors' perspective, there's a transparency element which I think Mr. Mannal touched on. But there's also sort of an enforceability. Right?

If God forbid, we were forced to seek specific

performance of the sale transaction, which no one anticipates, but I think it is helpful, because I think the indenture trustee would say, wait a second, I didn't buy -- I didn't buy a newspaper company. And Brigade might say, well, I didn't buy a newspaper company.

So it does provide the transparency and the link in the chain, so that we understand exactly who should be the obligor in the event that we had to enforce something.

THE COURT: And then there are terms in the sale agreement that specify what obligations the cash proceeds are going to be used to pay. I certainly don't usually see those. Why are those there?

MR. ROSENBERG: Those are there, Your Honor, as part -- an important element of the global settlement was to -- was the pathway to administrative solvency. Sometimes you have a credit bid and it's just sorry, guys, we're paying with debt and there's nothing left.

We were very successful, and I thank all the parties -- and I would be remiss if I didn't also thank Judge Carey, our mediator -- for getting us to an administratively solvent case. But it was very important to all the parties that there would be complete transparency and thoughtfulness about what obligations are being paid. And obviously the buyer has a view on what obligations it believes it is paying with respect to the cash that it's providing the estate.

So that's -- I agree, it's a little out of the norm, but it was very important to achieving the global peace.

I don't know, Kris, if you want to speak to that as well?

MR. HANSEN: No, I concur with your perspective, Van.

THE COURT: There's nothing -- I only got to read it quickly, but please confirm -- there's nothing in it that purports to change the absolute priorities or to give some particular obligation a right of payment that might be -- that it might not ordinarily have in relation to other obligations?

MR. DURRER: Correct, Your Honor. By and large, the obligations are all administrative priority or post-petition obligations. There are a couple of exceptions which form the basis for the settlement that Mr. Hansen was describing earlier.

But Mr. Hansen and his constituency understand that none of those items are going to be moving around until confirmation of a plan. But certain funds will be set aside for that purpose that ultimately won't find its way to a general unsecured creditor trust until we have a plan confirmed.

THE COURT: All right. So nothing that I'm being asked to do here would interfere with ordinary priorities in a way that would raise a Jevic issue, is my primary concern.

MR. DURRER: That's correct, Your Honor.

THE COURT: Mr. Hansen, do you agree with that?

MR. HANSEN: Yes, Your Honor, I do.

THE COURT: Okay. All right. I think I understand the settlement term sheet. On the sale order, there are a number of questions I have and comments. And any of you -- probably all of you, at this point, have had sale transactions that you've presented to me, so these comments will be not a surprise to you, I think.

On the various provisions about Section 363(n) -- not M but N, I don't mind saying that there's no evidence or indication in the record I have in front of me of any collusion, but as I understand it, the whole point of 363(n) is to permit, after the fact, invalidation of a transaction, if after the fact, it's discovered that there was collusion that people weren't aware of at the time.

So I'm often given sale orders that ask me to find that there is no claim under 363(n), there is no violation of 363(n). I'm happy to say that so far as I know there's no violation of 363(n), but I think it would be inconsistent with what 363(n) is meant to do, to essentially to say I am ruling for all time that there's no such thing as a 363(n) violation.

And on the various provisions -- and they're in here a number of times -- about free and clear of liabilities, free and clear of successor liability; as I've explained before, I don't agree to enter all these provisions that essentially

purport to give a declaratory judgment as to exactly what that means with a long laundry list of what particular kinds of obligations are within the scope of 363(f).

There have been some cases that have explored some limits to 363(f), and I don't purport to describe exactly what the full scope is. What I always say is that it is free and clear of liabilities, including successor liabilities, to the fullest extent permitted by Section 363(f).

And --

MR. DURRER: I think --

THE COURT: Yeah, go ahead.

MR. DURRER: Thank you, Your Honor. Van Durrer. I think it would be -- obviously Mr. Rosenberg can speak for himself, but I know for a fact that it would be important to the buyer to have a clear statement that they're not buying into any of our pension plans.

And just by way of information, we are informed that the PBGC will likely execute a termination of the plan on its own, so the distressed termination motion that we have before you will likely become moot, and so that you won't need to address that.

But I believe that was the concern that I know the buyers would have. Again, Mr. Rosenberg might want to speak for himself.

THE COURT: Is the PBGC on the phone?

MR. KHALSA: Yes, Your Honor. PBGC is here. Sorry, I had to get off mute. This is Kartar Khalsa, for the PBGC.

THE COURT: So I think what Mr. Durrer just said is that they would like to make clear that under 363(f), the sale is free and clear of the pension obligations. Do you have any dispute with that?

MR. KHALSA: We do not dispute that.

THE COURT: Okay. Then go ahead and list that one, because that one, I think, has pretty clearly been identified. We have the party on the phone, and there's no objection to the inclusion. Okay?

MR. DURRER: Thank you, Your Honor.

THE COURT: There's a finding in the proposed order that the global settlement itself is fair, reasonable, and meets the standards under Rule 9019. That's for me to decide at the confirmation hearing, isn't it, not today?

MR. DURRER: I don't know if Mr. Hansen wants to speak to that, but I -- it was -- I know it was important to the committee to have -- to have some relief with respect to the settlement today, because obviously most of the assets are going to be going away at a closing to occur in approximately a month.

But we certainly haven't filed formally for relief under 9019. I think the finding that it is reasonable and is a great accomplishment in a case, I think, is perfectly fair. So

that may be self-evident from the record.

THE COURT: Yeah, my concern is I don't want to say in the context of a sale hearing what the terms of a plan already are or are confirmed to be. If they're being presented in a plan, they should be approved then.

I don't mind approving and binding everybody to their commitments that they've stated to pursue a plan with those terms and the reasonableness of their commitment to pursue a plan under those terms. I just don't want it to be worded to suggest that I'm already approving the terms themselves, which I think are set up only to be approved when a plan is confirmed.

MR. HANSEN: Yes, Your Honor --

MR. DURRER: Yeah, I --

MR. HANSEN: -- it's Kris Hansen with Stroock, on behalf the committee, again.

I guess the struggle that we're having is that some of the terms are to be included in a plan which you'll approve when we get to confirmation of that plan, and some of the terms are actually a component of the sale order. And then some of the terms kind of govern the in-between, if you will.

And we're all -- everyone here is a professional, and we're all proceeding in good faith, but from a legal perspective, we, on the committee's side, needed some approval of this prior to the time that the assets move and to preserve,

effectively, all of the elements of the settlement which then help us ensure that we don't have disputes over these issues as they get packaged into a plan, and that we lock in the buyer, and we lock in Brigade, we lock in Chatham, we lock in ourselves and the debtors, with respect to all of the other provisions of it.

And from an approval perspective, I guess we were struggling a little bit with the rule that would enable you to approve it outside of 9019, since it is a settlement. And so --

THE COURT: But why don't you --

MR. HANSEN: -- we had --

THE COURT: -- why don't you -- why don't you do this? Why don't you just say that the agreement is approved, provided that to the extent that the agreement contemplates the pursuit of a plan and support of a plan, the terms of the -- the provisions that describe the terms of the plan are subject to the confirmation of the plan, and the propriety of those terms will be decided at confirmation?

MR. DURRER: I heard Your Honor say that you were willing to keep the parties to their bargain with respect to the in-between time. So I think from the debtors' perspective, I think that gets us there.

Kris, is that -- does that work for you?

MR. HANSEN: It does, Your Honor. I appreciate your

flexibility on that front.

THE COURT: Okay. My only -- I wasn't trying to make the entire -- put the entire thing back in the air. And I appreciate your response. I just also didn't want to pre-approve things that I'm really only supposed to be considering at a confirmation hearing.

MR. HANSEN: Yeah, exactly. Again, Your Honor, it's Kris Hansen with Stroock, on behalf of the committee. I think our concern is obviously there are some assets that move with the sale that we retain a continuing interest in, from both an estate perspective, but ultimately a creditor trust perspective.

And so those portions of the transfer, if you will, are effectively like being modified. Rather than try to go back in and modify the entirety of the APA, we're modifying it as a result of the --

THE COURT: I understand, and I did not mean to defer the approval of those.

MR. HANSEN: Yes, understood, Your Honor.

THE COURT: Okay. All right, well, you get the concept, I think. You can, I'm sure, come up with some language that will address it.

I see in the order there's a provision that says that after sale, the assets will be subject to the liens of the new facilities. Why am I ruling on that?

MR. ROSENBERG: Andrew Rosenberg, again, from Paul Weiss, for Chatham.

I think the answer is the same answer as before, that the -- to the extent it was an integrated transaction, and some of the people are taking back debt -- again, I would say it's probably somewhat more of a comfort order, since I don't -- I think the -- we're going to go through the process anyway, with the loan agreement, obviously, of making sure the --

THE COURT: Everybody who's --

MR. ROSENBERG: -- the UCC filing a mortgage --

THE COURT: -- everybody who's affected by that is fine with me saying it, though, I take it? Chatham, the indenture trustee, Brigade, they all want to include this provision?

MR. ROSENBERG: Chatham does.

THE COURT: Okay. All right. It seems like an odd thing for me to be ordering, but it's sort of like approving a stipulation, I guess.

MR. MANNAL: And I apologize, Your Honor. My phone cut out. Could you then repeat the specific provision you're focused on?

THE COURT: It's paragraph 9 of the proposed sale order, which has me ordering that the assets will be subject of the liens of the new facilities after the transfer.

MR. MANNAL: That's correct, Your Honor. Brigade is

supportive of that provision, Your Honor.

THE COURT: All right. Well, I take it, that's basically by agreement of the parties. Why don't you just add that "by agreement of the parties", then I can so order it pursuant to that agreement. It seems like a funny thing for me to be otherwise directing.

The paragraph 11, where it says that people are barred from pursuing claims against the assets, I think you need to look at your language, because for example, taxing authorities, like the Texas Taxing Authorities, they're going to have tax claims -- property tax claims against assets that are being transferred and that will be attributable, perhaps, to time periods after the date of the closing. But I think the way you've worded at paragraph 11, it essentially would say that nobody can pursue the claims against the assets, period.

So I just think you need to tinker with your language. I think what you're intending to do is to bar claims based on events pre-closing, but I don't think it says that.

MR. ROSENBERG: Andrew Rosenberg, Your Honor. That was the intent. We'll take a look at it. As nice as it would be to never have to pay taxes on any of the assets ever again, that was not our intent.

THE COURT: Right. And now, it's possible I read that in the darkness here in my little home office, my flashlight, a little too hastily, but I think that's -- take a look at it and

see if that needs fixing.

Then there's also a paragraph that says that no other liabilities will accrue on the assigned contracts between now and the closing. When is the closing likely to be?

MR. ROSENBERG: The end of -- end of -- sometime late August, is the anticipated date.

THE COURT: Well, there have to be some contracts, right, that are -- I mean, unless your cure amounts forecasted all the way through the end of August -- but there have to be some contracts on which something's going to accrue between now and then; isn't there?

MR. ROSENBERG: We will --

THE COURT: Paragraph 13 has me saying no.

MR. ROSENBERG: I will -- we'll take a look at that, Your Honor. I just lost my computer screen with this on it, but we'll take a look at the language.

THE COURT: Okay.

MR. ROSENBERG: But obviously Your Honor is correct. There would have to be -- unless it was all included in the cure obligations, then obviously they would -- the contracts are ongoing, so there would have to be some liabilities that we're potentially accruing.

THE COURT: Okay. And the various escrows that you're asking me to approve, what are those and why are they being set up?

MR. DURRER: Those are being set up, Your Honor, to ensure the bargain that the buyer has sought that certain of its funds are going to be earmarked for certain purposes.

THE COURT: Okay. But I retain full control over those escrowed funds and the final allocation of administrative expense claims, et cetera, right?

MR. DURRER: Yes, Your Honor.

THE COURT: Okay. There appears to be an exculpation provision in paragraph 34, the kind that I usually see in a plan. What's my authority to do that in a sale order?

MR. DURRER: I think it's a recognition, Your Honor, that the process has been undertaken in good faith and you do have the ability to cut off collateral attacks on the sale. It's not -- again, it's not essential for the debtors. That's the justification.

I don't know how the buyer and others feel about it.

MR. ROSENBERG: Your Honor, it's Andrew Rosenberg, again. I viewed the provision -- it is somewhat like a plan exculpation, but I think it was an exculpation only with actions taken during the course of the cases to effectuate the sale and the agreements necessary to implement the sale.

So I consider it a little bit of a -- almost a tack-on to our ancillary to Section 363(m), and that we're just getting it -- essentially the actions we took through a somewhat occasionally contentious process to effectuate the sale, that

we're not going to hear anything -- that anything we did was not proper.

THE COURT: Let me take a look at it again. No, it actually is much broader than that. It's just like a plan exculpation. It says you're not liable to anybody for anything you've ever done in connection with the operation of their businesses during the cases, the investigation of these transactions. So it does go a little broader than that.

MR. ROSENBERG: We can limit it, if that -- if that would be acceptable to the Court.

THE COURT: All right. And it's subject to the terms of Section 363(m). I don't expect --

MR. ROSENBERG: Correct, we --

THE COURT: I don't expect --

MR. ROSENBERG: -- we're not looking to undo the earlier part of this ruling.

THE COURT: Right, right.

All right, very good. Some of those changes I would normally just tell you to send me a Word copy and I would make them myself, but I don't know when I'm going to have a computer again.

MR. DURRER: Understood, Your Honor. We're happy to take the pen and help you out. We appreciate your circumstances, for sure.

THE COURT: Okay. And then send it to us in Word

format with a red-line, and if we have other little edits here and there, we'll add them and send them back to you.

MR. DURRER: Thank you, Your Honor.

THE COURT: Subject to those changes and clarifications, I will approve the sale.

MR. DURRER: Thank you very much, Your Honor.

THE COURT: Okay.

IN UNISON: Thank you, Your Honor.

THE COURT: All right. And I don't know if he's listening or not, but I appreciate Judge Carey's help in assisting you to reach a resolution here.

MR. DURRER: We will make sure he gets the message.

THE COURT: Okay, and tell him I hope he's doing well.

Very good. Is there anything else for today?

MR. DURRER: Nothing more for today, Your Honor. Good luck with the storm.

THE COURT: Thanks. I can deal with the lack of power as long as a tree doesn't land on my roof.

All right, we are adjourned. Thank you very much.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 3:53 PM)

I N D E X

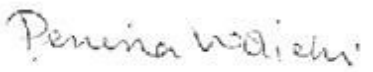
E X H I B I T S

DEBTORS'	DESCRIPTION	MARKED	ADMITTED
--	Declaration of Mr. Knee		16
--	Declaration of Mr. Harding		16

RULINGS:	PAGE	LINE
Motion authorizing abandonment of equity interest in Quad County Publishing is granted.	13	16
Subject to changes and clarifications on the record, the sale is approved.	46	4

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Penina Wolicki (CET-569)

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Date: August 5, 2020

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